



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

January 26, 2001

Reply to
Attn of: ORC-158

MEMORANDUM

SUBJECT: Quinault Indian Nation: Application for "Treatment as a State" for Nonpoint Sources of Water Pollution Program Purposes under Section 319 of the Clean Water Act

FROM : Ann E. Prezyna *CEP*
Deputy Regional Counsel

TO: Elbert Moore, Director
Office of Ecosystems and Communities

This memorandum summarizes the legal analysis of the Office of Regional Counsel of an application for "Treatment as a State" ("TAS") by the Quinault Indian Nation ("QIN"), Washington, for the purpose of obtaining grants under Section 319 of the Clean Water Act ("CWA"), 33 U.S.C. § 1329. It is ORC's opinion that the Quinault Indian Nation is eligible for the assistance programs under Section 319(h) of the CWA upon approval by EPA of both a report submitted under Section 319(a) of the CWA and a management program submitted under Section 319(b) of the CWA.

On October 23, 2000, the QIN applied for a TAS determination in order to qualify for grants under the Nonpoint Source Management Program. Approximately 78% of the Quinault Reservation lands are owned by the QIN or by Indians. Most of that land is trust property.

Section 319 of the CWA provides EPA the authority to provide funding to assist an eligible tribe to develop and implement a nonpoint source management program that has been approved by EPA. To be eligible for grants under Section 319 of the CWA, a tribe must meet the criteria of Section 518(e) of the CWA as set forth in 40 C.F.R. 130.6(d) and the requirements of Section 319(h) of the CWA by obtaining EPA approval of a report under Section 319(a) of the CWA and of a management program under Section 319(b) of the CWA. This memorandum addresses whether the Quinault Indian Nation meets the eligibility criteria of Section 518(e) of the CWA and 40 C.F.R. Part 130 without considering whether the requirements of Section 319(h) have been met.

Sections 518(e) and (f) of the CWA authorize EPA to treat an Indian Tribe as a state for purposes of Sec. 319 of the CWA if, in part, "the functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are. . . within the borders of

an Indian reservation.” 33 U.S.C. § 1377(e)(2). EPA interprets Sec. 518 as limiting tribes to the management of waters “within the reservation” or that “pertain to waters of the reservation.” EPA also interprets “Indian reservation” to include lands the U.S. holds in trust for an Indian tribe (“tribal trust lands”). A tribe may use CWA grant funds outside the reservation or tribal trust lands if the eligible activity pertains to management of the waters within the reservation or tribal trust lands and this relationship is explained in its work plan. If the work plan includes off-reservation activities, the grant agreement must condition the use of funds on the tribe’s securing necessary access agreements or permission to do off-reservation studies.

EVALUATION OF QIN’S APPLICATION

EPA regulations at 40 C.F.R. Part 130.6(d) provide that an Indian Tribe may be eligible for “treatment as a state” for nonpoint sources of water pollution program purposes under section 319 of the CWA if the tribe meets the following criteria:

1. Federal Recognition. A tribe must be recognized by the Secretary of Interior. Federal Recognition is addressed in Part II of the QIN application. The QIN is a federally recognized Indian tribe. See Notice, Bureau of Indian Affairs, 63 Federal Register 71941, December 30, 1998, which lists entities recognized as Tribes. A copy of this notice is attached as Exhibit 2 to the QIN application.

2. Governmental Powers. A tribe must have a governing body for carrying out substantial government duties and powers. Part III of the QIN application shows the substantial governmental duties and powers of the QIN. The Quinault Business Committee carries out powers and duties as the governing body of the QIN. These powers and functions emanate from Article V of the Constitution and Bylaws of the QIN, most recently amended on March 22, 1975. A copy of the Constitution and Bylaws is attached as Exhibit 3 to the QIN application. The QIN operates Tribal programs, enacts Tribal laws and ordinances, and carries out or administers numerous other governmental functions and services. The QIN also established a Quinault Tribal Court under Title V of the Quinault Tribal Code. Civil jurisdiction of the court extends to non-Indians for activities on the reservation that violate tribal civil ordinances and regulations affecting the political integrity, economic security, health, safety, and welfare of the QIN.

3. Authority over Water Resources Within the Reservation. A tribe must demonstrate a sufficient legal basis for asserting regulatory authority over water resources within its borders. Part IV of the QIN application includes a legal analysis by Fawn Sharp, Reservation Attorney, that describes the basis of the QIN’s authority over land and water resources on the reservation. That analysis is supported by citation to federal laws and cases. It concludes that the QIN has the authority to abate and enjoin pollution sources or releases that take place within the boundaries of the QIN.

4. Tribal Capability to Carry Out Non-Point Source Program. A tribe must be reasonably expected to be able to carry out a non-point source pollution program under the CWA. Part V of the QIN application addresses the QIN's ability to carry out CWA section 319 responsibilities. It adequately demonstrates that the QIN is fully capable of administering and managing an effective nonpoint source management program.

CONCLUSION

Based on this analysis that the Quinault Indian Nation meets the requirements of Section 518 of the Clean Water Act, we conclude that the Tribe is eligible for the assistance programs under Section 319 of the CWA, conditioned upon approval by EPA of the reports required under Sections 319(a) and (b) of the CWA.

cc: Christine Reichgott
Scott Sufficool
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